

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

BRIAN HAZZARD,

Plaintiff,

VS.

RYAN BOURGEIOS, *et al*,

Defendants.

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CIVIL ACTION NO. C-11-51

ORDER

On this day came to be considered Federal Home Loan Mortgage Corporation's Motion to Remand Proceeding, (D.E. 8), seeking to remand the state court action for forcible detainer referenced in Brian Hazzard's Original Petition, (D.E. 7, Ex. A), which is currently pending in the Justice Court of Nueces County, Texas, Precinct 2, Place 2, and styled as Cause No. 2011-EV-00098-JP2-2. Although Hazzard has not yet responded to the motion, for the reasons stated below, the Court finds *sua sponte* that it lacks subject matter jurisdiction over the state court action, and GRANTS the Motion to Remand (D.E. 8).

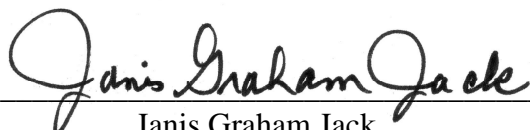
On March 29, 2011, Brian Hazzard (plaintiff in the above styled action, but defendant in the related state court case) filed a Notice of Removal, attempting to remove the state court lawsuit for forcible detainer filed against him by Federal Home Loan Mortgage Corporation (defendant in the above styled action, but plaintiff in the state case). (D.E. 7.) However, although Hazzard contends removal is based upon this Court's federal question jurisdiction pursuant to 28 U.S.C. § 1331, there are no federal causes of action in Federal Home Loan Mortgage Company's Original Petition for Forcible Detainer. (D.E. 7, Ex. A.) Additionally, the Court lacks diversity jurisdiction under §1332 because the record indicates that Brian Hazzard is a citizen of Texas. See §1441(b) (When jurisdiction is not based on federal question, the "action

shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.”)

Therefore, the Court lacks subject matter to hear the state court case, and it must be remanded to state court. See 28 U.S.C. § 1447(c) (“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.”); see also, e.g., Aurora Loan Services, LLC v. Kennedy, 2010 WL 3719071, * 1 (S.D.Cal., Sept. 17, 2010) (remanding unlawful detainer action filed under California state law for lack of federal question jurisdiction).

Accordingly, the Court hereby REMANDS the action referenced in the Notice of Removal to the Justice Court of Nueces County, Texas, Precinct 2, Place 2, where it is currently styled as Cause No. 2011-EV-00098-JP2-2. Plaintiff Brian Hazzard’s federal lawsuit with this Court, (D.E. 1), remains. The initial pre-trial conference is scheduled for April 7, 2011.

SIGNED and ORDERED this 31st day of March, 2011.


Janis Graham Jack
United States District Judge